

COUNTY OF LOS ANGELES – DEPARTMENT OF MENTAL HEALTH

FACT SHEET

**APPROVAL OF AMENDMENT NO. 3 TO COUNTY AGREEMENT NUMBER 74144
WITH SIERRA SYSTEMS INC. FOR FISCAL YEARS 2008-09, 2009-10, 2010-11,
2011-12 and 2012-13
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTE)**

SUBJECT

Request approval of Amendment No. 3 to extend the term of the Agreement with Sierra Systems Inc., for continued maintenance services of the Integrated System (IS) and to acknowledge the corporate merger of Sierra Systems Group Inc., a California corporation (Sierra California), with and into Sierra Systems Inc., a Washington corporation (Sierra Washington), effective as of December 31, 2003, and the delegation and assignment of the Agreement from Sierra California to Sierra Washington, effective as of December 31, 2003.

REQUEST

Acknowledge (i) the merger of Sierra Systems Group Inc., a California corporation (Sierra California), with and into Sierra Systems Inc., a Washington corporation (Sierra Washington), effective as of December 31, 2003, whereby Sierra California ceased to exist on such date, and (ii) the delegation and assignment of the Agreement, effective as of December 31, 2003;

Approve a retroactive adjustment to the Maximum Contract Sum (MCS) in the amount of \$1,281,564, for a total of \$20,302,121, for the term through September 21, 2008, to reflect one year of optional maintenance services provided for the period of September 22, 2007, through September 21, 2008;

Approve and instruct the Director of Mental Health (DMH) or his designee to prepare, sign, and execute Amendment No. 3 to the Agreement effective upon Board approval, to provide for continued maintenance services of the IS and Professional Services/Change Orders; extend the term of the Agreement through June 30, 2012; and increase the MCS to \$27,245,525, funded by County General funds, federal and state revenues and other sources;

Delegate authority to the County Project Director, in his sole discretion, to extend the term of the Agreement by six months through December 31, 2012; and

Delegate authority to the Director of DMH, in his/her sole discretion, to terminate the Agreement for convenience when DMH's planned replacement system, the Integrated

Behavioral Health Information System (IBHIS), is fully developed and operational, as determined in the sole judgment of the Director of DMH.

PURPOSE/JUSTIFICATION

Board approval of the recommended actions ensures uninterrupted day-to-day operations and continued maintenance of the IS, which is the system by which contractors and DMH directly operated programs are able to claim services and receive reimbursement from various funding sources. The proposed Amendment will also require Sierra Washington to perform transition services that will facilitate a smooth shut-down of the IS and transition to DMH's planned IBHIS.

On September 3, 2002, your Board approved an agreement with Sierra California, a wholly owned subsidiary of Sierra Systems Group Inc., a British Columbia corporation (Sierra BC), to develop an IS in order to assist DMH in achieving compliance under the Health Insurance Portability and Accountability Act (HIPAA) Transaction and Code Set (TCS) rules to meet the HIPAA requirements by the extended Federal deadline of October 16, 2003.

Effective December 31, 2003, Sierra California was merged with and into Sierra Washington, a wholly owned subsidiary of Sierra BC, and Sierra California ceased to exist. As part of such corporate merger, Sierra Washington acquired all the assets, including, but not limited to, all hardware, software (including all copyrights and other intellectual property rights), facilities and personnel, of Sierra California, and assumed all the obligations, responsibilities, liabilities and rights of Sierra California under the Agreement. However, there is no evidence that DMH was notified of this merger.

The Agreement provided for an Initial Term of September 3, 2002, through three years after the Final Acceptance Date of the IS. The Final Acceptance Date was September 21, 2004, so the Initial Term expired on September 21, 2007. The original Agreement also provided for three automatic two-year extensions followed by a one-year extension for continued maintenance of the system, unless either party chose to terminate the agreement with six months notice prior to the end of the Initial Term or any applicable Option Term. Sierra California has previously submitted two termination notices to County, dated March 9, 2007 and March 19, 2008. Under Amendment No. 3, the right of a party to terminate the Agreement with six months notice prior to the end of the Initial Term or an Option Term has been removed.

On March 9, 2007, Sierra California submitted a termination notice to DMH effective as of September 22, 2007. As the expiration date of the Initial Term (September 21, 2007) was approaching, DMH executed with Sierra California a Change Order to extend the Agreement term for only one year, from September 22, 2007 through September 21,

2008, which was within the scope of delegated authority granted by the Board under the Agreement.

The Change Order also provided for the annual maintenance payment for the extended term, calculated in accordance with the language included in the Agreement, in the amount of \$1,281,564. However, the Board letter that approved the Agreement required DMH to return to the Board to amend and increase the MCS to cover the extended term. As the language in the Agreement did not specifically reflect this requirement, DMH staff did not realize that it did not have the authority to pay for maintenance services in the extended term without Board approval.

The proposed Amendment acknowledges the merger of Sierra California with and into Sierra Washington, effective as of December 31, 2003; extends the term of the Agreement through June 30, 2012, with an additional six-month extension (Option Term) through December 31, 2012; increases the MCS by a total of \$8,224,968 to a total of \$27,245,525; and adds and revises certain other County-required provisions of the Agreement.

Retroactive Contracts Review Committee

On August 12, 2008, DMH presented this proposed action to the Retroactive Contracts Review Committee (RCRC). The RCRC approved this action moving forward for Board approval but requested that DMH incorporate corrective actions to 1) identify any "red flags" that may alert DMH to potential mergers and/or acquisitions of contractors when the contractors fail to notify the Department; 2) ensure that contract monitoring procedures for information technology (IT) contracts are consistent with contract monitoring procedures for DMH's other contracts; and 3) eliminate ambiguity regarding DMH's ability to exercise renewal options when such options will increase the maximum contract amount.

In response to the RCRC's concerns, DMH proposes the following corrective actions:

- DMH has identified two potential "red flags" that may indicate changes of ownership or potential mergers or acquisitions. These potential red flags include changes in a remittance address and minor name changes that would otherwise go unnoticed unless the new company established a new tax identification number. Fiscal staff will notify the DMH Contracts Development and Administration Division (CDAD) whenever a DMH contractor requests a change in the remittance address or when invoices or other documents indicate any potential name change. CDAD staff will investigate to ensure that the change has not resulted from a merger, acquisition or other change of ownership.

- DMH will remind all contractors of the requirement that they notify the Department of any merger, acquisition or other change of ownership.
- DMH will assign CDAD staff to work in conjunction with DMH's Chief Information Office Bureau (CIOB) to ensure that CIOB staff is fully trained and has implemented the requisite internal monitoring and controls to ensure that contract sums are not exceeded.
- DMH fiscal and budget staff, who control payments and encumbrances for all regular and IT contracts, will be provided with copies of the Board letter approving the contract(s) as well as the actual contracts to ensure that provisions related to the contract maximum amounts and any delegated authority to change those amounts are clearly understood.
- In contracts that include provisions for option periods, the pricing and/or payment provisions will include separate entries for each option period that 1) states the basis of the amount of payment in any option period and 2) clearly indicates what authority (Board, DMH or other) is required in order to authorize payment in the option period.

An employee's failure to comply with the Department's revised procedures to avoid retroactive contracts may constitute grounds for disciplinary action pursuant to Civil Service Rules.

BACKGROUND

The Agreement was entered into originally with Sierra California, a wholly owned subsidiary of Sierra Systems Group Inc., a British Columbia corporation (Sierra BC), on September 3, 2002, to develop an IS in order to assist DMH in achieving compliance under the HIPAA Transaction and Code Set (TCS) rules to meet the HIPAA requirements and the extended Federal deadline of October 16, 2003.

On or about September 3, 2002, Sierra BC made and executed a Continuing Special Guaranty as guarantor for Sierra California on the Agreement.

Subsequently, pursuant to the Agreement, DMH executed Amendment Nos. 1 and 2, on March 26, 2003 and December 15, 2005, respectively. Amendment No. 1 revised standard County contract language regarding HIPAA. Amendment No. 2 changed the names of the County Project Director and County Project Manager, added standard contract monitoring language to protect against contract overruns, added and revised certain standard contract provisions and amended contract language regarding HIPAA.

Effective December 31, 2003, Sierra California was merged with and into Sierra Washington, a wholly owned subsidiary of Sierra BC, and Sierra California ceased to exist. As part of such corporate merger, Sierra Washington acquired all the assets, including, but not limited to, all hardware, software (including all copyrights and other intellectual property rights), facilities and personnel, of Sierra California, and assumed all the obligations, responsibilities, liabilities and rights of Sierra California under the Agreement.

Sierra Washington represents that it does not believe that the December 31, 2003 corporate merger of Sierra California with and into Sierra Washington has had or will have any financial impact or service delivery impact whatsoever for the County under the Agreement, and that Sierra Washington shall fully perform all of the obligations, responsibilities and liabilities of Sierra California under the Agreement.

On January 6, 2007, Sierra BC was acquired by GGC Sierra Holdco Ltd., a Cayman Islands corporation (GGC Sierra).

On December 29, 2006, Sierra Top Holding S.A.R.L., a Luxembourg corporation (Sierra Top Holding), was formed as, and is now, a wholly owned subsidiary of GGC Sierra.

On December 29, 2006, Sierra Intermediate Holdings S.A.R.L., a Luxembourg corporation (Sierra Intermediate), was formed as, and is now, a wholly owned subsidiary of Sierra Top Holding.

On February 10, 2007, Sierra Washington and Sierra BC became, and are now, sister corporations and wholly owned subsidiaries of Sierra Intermediate.

On August 1, 2008, Sierra BC and Sierra Top Holding made and executed a Continuing Special Guaranty as joint and several guarantors for Sierra Washington on the Agreement, effective (i) as to Sierra BC, on January 1, 2004; and (ii) as to Sierra Top Holding, on January 6, 2007.

DMH conducted a thorough review of the merger of Sierra California with and into Sierra Washington, pursuant to the standards set forth in the Board Policy on contractor mergers/acquisitions, approved by the Board on July 19, 2005. DMH found Sierra Washington to be a financially viable entity and has the necessary experience to perform the services required under the existing Agreement.

The proposed Amendment acknowledges the merger of Sierra California with and into Sierra Washington, effective as of December 31, 2003; extends the term of the Agreement through June 30, 2012, with an additional six-month extension (Option Term) through December 31, 2012, which can be exercised at the sole discretion of the

County Project Director; increases Pool Dollars for Professional Services/Change Orders, which may include, without limitation, IS-related work needed to transition to DMH's new IBHIS; increases maintenance fees through December 31, 2012; and increases the MCS by \$8,224,968 effective as of September 22, 2007 to a total of \$27,245,525. The Agreement, and the MCS, provide for an increase in the annual maintenance fees of three percent for FY 2008-09 and a projected increase of four percent for the remaining FYs 2009-10, 2010-11, 2011-12, and 2012-13, provided that the actual percentage increase will be based on the lesser of the annual Consumer Price Index (CPI) increase or the general annual percentage salary change granted to County employees as of the prior July 1.

This Amendment also revises the "Contractor's Responsibility and Debarment" and "Delegation and Assignment by Contractor" provisions to be consistent with the County's standard contract language. Also included is the Board-mandated provision on "Contractor's Charitable Activities Compliance."

Sidley Austin LLP (outside counsel) has reviewed and commented on the provisions of the Amendment applicable to ongoing litigation relating to the Agreement in which the firm is representing the County. The Amendment has also been reviewed and approved as to form by County Counsel. The Chief Executive Office and County's Chief Information Officer have reviewed and approved the recommended actions.

During the extended term of the Agreement under this Amendment, DMH, through a Request For Proposal (RFP) process, plans to select a commercial off-the-shelf (COTS) software application for an IBHIS with clinical, administrative, and billing/claiming capabilities that has a track record of success in other large mental health services delivery organizations. The application will be vendor supported and maintained and integrated with broad functionality to meet the requirements of DMH under the Mental Health Services Act (MHSA). Once an agreement has been executed with a software vendor for the IBHIS and the IBHIS has been implemented, both the IS and the legacy Mental Health Management Information System (MHMIS) will be retired. The MHMIS is DMH's legacy HIPAA non-compliant billing system that was augmented by the IS as a "wrapper" in February 2004 to achieve HIPAA compliance.

CONTACT INFORMATION

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Approved By:

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